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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Subscriber Carrier)	CC Docket No. 94-129
Selection Changes Provisions of the)	
Telecommunications Act of 1996)	
)	
Policies and Rules Concerning)	
Unauthorized Changes of Consumers' Long)	
Distance Carriers)	

COMMENTS OF MEDIAONE

MediaOne Group, Inc. ("MediaOne") submits these comments concerning unauthorized carrier changes, also known as "slamming," in response to the Further Notice of Proposed Rulemaking ("FNPRM") in the above-captioned docket.^{1/} MediaOne is the parent company of the third largest cable television multiple system operator ("MSO") in the United States, providing an increasing variety of cable services to approximately five million customers in the United States. Through its subsidiary, MediaOne Telecommunications, Inc., MediaOne provides residential facilities-based competitive local telephone service in Atlanta, Georgia; Los Angeles, California; Pompano and Jacksonville, Florida; several communities surrounding Boston, Massachusetts; and Richmond, Virginia and plans to provide telecommunications service to additional markets in the near future.

^{1/} In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Further Notice of Proposed Rulemaking, (released December 23, 1998) ("FNPRM").

For the reasons set forth below, MediaOne respectfully requests that the Commission modify certain aspects of its proposed revisions to its current slamming rules. At a time when competition is just beginning to emerge in many segments of the telecommunications industry, the Commission must take care in balancing the need to protect consumers against slamming and the need to allow new entrants to market their services.

INTRODUCTION AND SUMMARY

MediaOne commends the Commission on its continued efforts to deter slamming. As the Commission has long recognized, the slamming rules must satisfy both “the industry’s need for flexibility in marketing its services . . . and the need to protect consumers from deceptive marketing tactics.”^{2/} For the most part, the Commission’s new slamming rules succeed in striking this balance. For example, the Commission has recognized that while preferred carrier (“PC”) freezes may help safeguard against slamming, the rules must ensure that PC freezes are not used as anticompetitive weapons against new entrants.^{3/}

Some aspects of the proposed additions to the recently adopted slamming rules, however, would impose unreasonable and costly burdens that threaten to undermine the emergence of competition in key segments of the telecommunications marketplace. In particular, the FNPRM

^{2/} In the Matter of Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560, 9562 at ¶ 4 (1995).

^{3/} See In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers, CC Docket No. 94-129, Second Report and Order, at ¶ 113 (released December 23, 1998) (“Second R&O”) (“although preferred carrier freezes offer consumers an additional and beneficial level of protection against slamming, they also create the potential for unreasonable and anticompetitive behavior”).

raises the possibility of restricting the use of automated third party verification systems.^{4/}

MediaOne urges the Commission to permit the continued use of automated third party verification systems because automated systems are an important pro-competitive option that both cut costs and allow consistent, reliable verification of carrier change authorizations.

MediaOne also respectfully requests that the Commission refrain from adopting its proposed “double-refund” rule^{5/} at this time; define the term “subscriber” in a clear and unambiguous manner;^{6/} and reject its tentative proposal in the FNRPM to require all carriers, including those that do not engage in abusive marketing practices, to submit a report on the number of slamming complaints.^{7/} By adopting these modifications to its proposed slamming rules, MediaOne believes that the Commission will strike the appropriate balance between the need to protect consumers against slamming and the need to allow new entrants to market their services under a regulatory framework that is not unduly burdensome.

^{4/} See FNPRM at ¶ 167.

^{5/} See id. at ¶ 140-44.

^{6/} See id. at ¶ 176-78.

^{7/} See id. at ¶ 179.

COMMENTS

I. THE COMMISSION SHOULD PERMIT THE USE OF AUTOMATED THIRD PARTY VERIFICATION SYSTEMS AND THREE-WAY VERIFICATION CALLS

MediaOne shares the Commission's view that the independence of third parties charged with responsibility for verifying carrier changes must be guaranteed and that previously obtained authorizations must be confirmed "clearly and conspicuously."^{8/} The Commission must take care, however, not to impose inefficient and costly verification burdens that will hinder, rather than advance, the promotion of telecommunications competition. To that end, the slamming rules should allow the use of automated third party verification systems, and three-way verification calls also should be permitted. The Commission should announce the specific requirements for and limitations on the content of verification scripts in order to eliminate uncertainty as to what practices are necessary and acceptable.

A. The Use of Automated Third Party Verification Systems Should Be Permitted

MediaOne currently uses VoiceLog, an independent provider of automated verification services, to confirm carrier change authorizations. MediaOne's sales representatives can record an authorization at any time by making a conference call to the VoiceLog system while the customer is on the line. Once the conference call is set up, the Voice Log system plays a brief introductory message and prompts the customer to confirm the change authorization. After the confirmation is recorded, the sales representative presses the # key and the VoiceLog system provides a unique identification number so the recording can be retrieved later.

^{8/} FNPRM at ¶ 165.

Automated third party verification systems like the one offered by VoiceLog comply with the Commission's rules, and just as importantly, they offer advantages for both carriers and consumers. As a legal matter, automated third party verification systems satisfy the current carrier change authorization requirements, which provide that third party verifiers must be: (1) appropriately qualified; (2) independent; and (3) operating in a physically separate location.^{9/} Automated systems are "appropriately qualified" because they employ scripts that can be written in precise conformity with the Commission's rules. Carrier change confirmations are recorded, so disputes about what the customer said or was asked or told in the course of verifying a carrier change can be resolved conclusively.^{10/}

Automated systems not only ensure consistency in the verification process, avoiding disputes about whether the customer has been given adequate information, they give carriers a cost-effective way to create a readily accessible record of each order confirmation. Automated verification systems are available with usage charges of only 25 cents a minute, a savings of as much as 75 percent off the cost of live operator services.^{11/} By definition, new entrants must win new customers in order to compete, whereas incumbents need only prevent subscribers from

^{9/} See 47 C.F.R. § 64.1100(c).

^{10/} See Second R&O at ¶ 22, n.73 and accompanying text (citing audio tape of third party verification as example of "solid evidence that a consumer has authorized and verified a carrier change"); see also "How VoiceLog Works," <http://www.voicelog.com/vl_how.htm> (site visited March 16, 1999).

^{11/} See "Welcome to VoiceLog - A Superior Solution for Third Party Verification," <<http://www.voicelog.com/>> (site visited March 16, 1999); see also Ex parte presentation of VoiceLog LLC, In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129 (filed November 16, 1998) (citing cost estimates ranging from \$2 to \$3 per verification).

leaving for another carrier, so the burden of costly and cumbersome verification processes is borne disproportionately by competitive providers who are entering markets for the first time.

Automated systems provide immediate connections, round-the-clock availability, and predictable, consistent service. In the event of a dispute, the carrier has immediate access to a digital recording of the verification. If a customer calls to complain about an unauthorized carrier change, the recording can be obtained via conference call with the automated verification provider and played back while the customer is still on the line, allowing many disputes to be resolved without a formal complaint. Unlike live operators, automated verification systems offer recording and playback functions with little delay, answering within one ring even when traffic is heavy.

B. Carriers Should Be Allowed to Set Up Third Party Verification Conference Calls

The National Association of Attorneys General (“NAAG”) suggests that independent third party verification should be separated completely from communications between carriers and customers.^{12/} While well-intentioned, the NAAG proposal would serve only to complicate the verification process, and the proposal should be rejected. By preventing immediate verification at the conclusion of the sales transaction, the NAAG proposal would force the independent third party to reestablish contact with the customer by telephone or mail. The third party may have to call the customer back repeatedly, and the customer may forget to return a mail-in verification form or call a toll-free verification number.

Three-way conference calls are the quickest and most efficient method of accomplishing third party verifications, and they minimize the possibility that the customer will forget the

^{12/} See FNPRM at ¶ 166.

decision to change carriers or confuse the verification request with a new marketing solicitation by another carrier. Carrier participation also allows the marketing representative to answer questions that arise in the course of the verification process, a service that third parties verifiers may be unwilling or unable to perform.

The Commission does not need to adopt a “total separation” policy in order to protect consumers from overreaching by unscrupulous marketing representatives. The verification conference call is preserved on tape, and the knowledge that each call is recorded will deter abuse as well as provide documentation to allow resolution of disputed cases. The Commission’s slamming rules should prevent unauthorized carrier changes, but they should not interfere with legitimate marketing efforts. The participation of carrier marketing representatives in conference made for the purpose of verifying the customer’s change request does not pose any unique or substantial problem. The Commission should not prohibit these types of calls or it will unnecessarily increase the amount of time and money new entrants are forced to spend in order to attract new customers.^{13/}

C. The Format and Content of Third Party Verifications Should Be Defined

The current anti-slaming rules do not outline the format or content of the questions that an independent third party verifier must pose to a customer,^{14/} and the FNPRM asks whether the

^{13/} “Live scripted” verification is not materially different than any other automated system for the confirmation of carrier change requests. While the Commission expresses some concern with the live scripted approach because “it permits the carrier itself . . . to solicit the subscriber’s confirmation,” see FNPRM at ¶ 167, MediaOne believes that these concerns are offset by the fact that the call is recorded. Unlike other automated systems, live scripted verification also allows the consumer to ask questions during the confirmation process.

^{14/} Compare 47 C.F.R. § 64.1160 (listing information required on letter of agency) with 47 C.F.R. § 64.1150(c) (requiring independent third party to obtain “appropriate verification data” for oral authorization).

rules should include more detailed guidelines for third party verification requests.^{15/} MediaOne believes that the Commission should modify its slamming rules to provide additional guidance in order to protect carriers from slamming allegations based on disputes over the adequacy of steps taken by independent third parties in the verification process. The rules should require the independent third party to confirm: (1) the identity of the subscriber; (2) that the person contacted is authorized to make the change; and (3) a simple “yes” or “no” answer regarding the change selected. Proof of compliance with the rules should be considered conclusive proof that the carrier change is valid.

As the FNPRM tentatively suggests, the Commission also should clarify that independent third party verification service providers should be permitted to explain the verification process.^{16/} For example, the Commission could authorize third party verifiers to explain that they are contacting the customer in order for their new telecommunications carrier to comply with the FCC’s rules against unauthorized service changes, and that the customer’s confirmation is needed to begin service. Any attempt to toughen the Commission’s slamming rules must be accompanied by clear direction to help carriers and their employees comply with the Commission’s rules. Consistent compliance is not likely to be achieved unless the rules are easily comprehensible.

^{15/} FNPRM at ¶ 168.

^{16/} See id.

D. Third Party Verifiers Should Not Be Allowed To Offer Preferred Carrier Freezes

The Commission's current slamming rules recognize the potential for incumbent carriers to use PC freezes as an anticompetitive weapon against competing carriers.^{17/} As a new entrant, MediaOne is concerned that PC freezes could be used to impede freedom of movement by customers among carriers. By permitting third party verifiers to dispense information concerning PC freeze procedures, the Commission would create an incentive for verifiers to perform what amounts to a marketing service for the carriers who pay them by implicitly encouraging customers to lock in service with the carrier making the PC change. In addition, incorporation of information about PC freezes into the verification script is likely to be confusing to the consumer and would prolong the verification process unnecessarily.

II. THE COMMISSION SHOULD REFRAIN FROM ADOPTING ITS PROPOSED "DOUBLE REFUND" RULE AT THIS TIME

MediaOne agrees with the Commission's desire to set penalties that are sufficiently stiff to deter slamming while ensuring that neither authorized carriers nor their subscribers are forced to bear the cost of an unauthorized carrier's misconduct. The FCC should, however, defer adoption of the FNPRM's proposal to allow authorized carriers to recover double the amount paid to an unauthorized carrier by a subscriber in the first 30 days after the initial unauthorized charge until the Commission has had the opportunity to gauge the effectiveness of its new rules on slamming and on competition.^{18/}

^{17/} See Second R&O at ¶¶ 121-26; 47 C.F.R. § 1190 (establishing procedures for PC freezes).

^{18/} While the remedy for slamming specified in section 258(b) of the Communications Act is not exclusive, see 47 U.S.C. §258(b), the statute does not expressly provide for punitive sanctions. Even if section 201(b) of the Act could be read to authorize a double refund requirement after an

At this time, the slamming penalties approved by the Commission in the Second Report and Order in this proceeding appear to be sufficient to discourage slamming because they relieve slammed customers of the obligation to pay any charges incurred in the first 30 days after the unauthorized switch.^{19/} If the consumer has already paid the bill of the slamming carrier, the unauthorized carrier is required to remit the payments to the customer's authorized carrier, and the authorized carrier will refund any amount that the customer has paid in excess of the charges that would have been due to the authorized carrier.^{20/} Consistent with its prior evolutionary approach to the slamming problem, the Commission should wait until carriers have had an opportunity to adapt to the new slamming rules before promulgating additional penalties.

As a policy matter, the Commission should refrain from adopting its proposed "double refund" rule at this time because the rule may result in the imposition of significant costs on new entrants in the telecommunications marketplace. While both entrenched incumbents and new competitors must be held responsible for their marketing practices, the Commission should be especially wary of a rule that could create an economic incentive for incumbents to manipulate the enforcement process when no slamming has occurred. Indeed, until the Commission has had a substantial opportunity to gauge and refine rules to define when slamming has occurred, the

appropriate showing that compensating consumers and authorized carriers for direct losses had proven to be insufficient to deter slamming, immediate adoption of such a measure is neither necessary to implement section 258 nor otherwise in the public interest. See 47 U.S.C. § 201(b) (authorizing Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of [the] Act").

^{19/} See Second R&O at ¶¶ 19-20 (explaining that absolving consumers of liability for charges incurred after being slammed makes slamming unprofitable by cutting cash flow to slammers and giving customers incentive to scrutinize bills); id. at ¶¶ 23-24 (explaining rules for recovery of charges more than 30 days after unauthorized carrier change).

^{20/} See 47 C.F.R. § 64.1170.

cost to competition and administrative burdens of the Commission's proposed "double refund" rule may outweigh any deterrent benefit associated with the Commission's well-intentioned proposal.

In the event the Commission decides to proceed immediately with a double refund rule, it should not apply the rule to facilities-based local service, where customers are less susceptible to slamming activity. While the Commission has documented a substantial increase in slamming complaints against long distance companies, it has not developed statistics on slamming by local exchange carriers.^{21/} Until the Commission has persuasive evidence that slamming is a serious problem among local facilities-based carriers, it should decline to impose potentially unnecessary and costly penalties on these companies.

Limitation of a double refund rule to long distance carriers and local resellers would be fully consistent with the Commission's prior slamming decisions. For example, the Commission decided not to apply the verification rules to commercial mobile radio service ("CMRS") providers after it concluded that slamming is not a significant problem in the CMRS market.^{22/} Narrow application of a double refund rule would be competitively neutral because all facilities-based local carriers offering like services would be subject to the same penalties when they slam customers.

^{21/} See Federal Communications Commission, "Common Carrier Scorecard" (November 1998) at 33. The Commission reported data on the number of slamming complaints served on the nation's largest local exchange carriers, but noted that many complaints served on LECs arise from slamming by long distance carriers or other entities that have arranged for LECs to provide billing services. See *id.*

^{22/} See Second R&O at ¶ 85 (exempting CMRS providers on grounds that "slamming does not occur in the present CMRS market" and that Commission is "not aware of any slamming complaints in this area").

Of course, if slamming proves to be a pervasive problem among facilities-based local exchange carriers, the Commission can and should initiate a separate proceeding to determine whether, and to what extent, it should promulgate additional rules to address the problem. Until then, facilities-based local carriers should be subject to the Commission's existing penalty rules, which require slammers to pay back customers and carriers for direct losses suffered as a consequence of unauthorized changes.

III. THE TERM "SUBSCRIBER" SHOULD BE DEFINED IN A CLEAR AND UNAMBIGUOUS MANNER

MediaOne supports the Commission's proposal to define the term "subscriber" in a way that will maximize protection and convenience for consumers and promote competition in telecommunications service.^{23/} These goals require that "subscriber" have a clear and unambiguous meaning. The Commission should avoid adopting a definition that would require a carrier's marketing representatives to dissect the relationships between members of a customer's household or the authority of a customer's employees. Sales personnel and independent third party verifiers should be given a straightforward and non-intrusive means of ascertaining whether a particular person has the power to approve a change in telecommunications service.

To that end, MediaOne proposes that the Commission consider adopting the Florida Public Service Commission's subscriber authorization definition as the federal standard. Florida's public utility regulations provide that for residential service, carrier changes may be authorized by the customer or any other person 18 years of age or older within the same

^{23/} See FNPRM at ¶ 176.

household.^{24/} For business service, changes may be made by the person designated as the contact for the local telecommunications company, an officer of the company, or the owner of the company.^{25/} If the FCC adopts the Florida model, the verification process could include a requirement for the independent third party to ask the person confirming the carrier change to state that they are in fact authorized to make decisions concerning the customer's telecommunications service.

The Florida rules are simple to apply, but they also recognize the fact that not every household or business is the same and that a requirement for direct contact with the person whose name appears on the bill may make carrier changes unduly burdensome. The authorization rules must protect consumers from slamming, but they also must give carriers an assurance that if they follow reasonable procedures, they will be able to rely on representations by subscribers.

IV. THE COMMISSION SHOULD NOT ADOPT NEW REPORTING REQUIREMENTS FOR ALL CARRIERS

In light of the recent adoption of new slamming rules, the Commission should reject the tentative proposal in the FNPRM to require carriers to submit a report on the number of slamming complaints at this time.^{26/} The Commission's new rules have minimized incentives to slam and have made it easier for consumers to obtain relief from unauthorized charges, and the

^{24/} See Fla. Admin. Code Ann. r. § 25-4.118(1).

^{25/} See id.

^{26/} See FNPRM at ¶ 179.

FCC is establishing a web site for consumers to file complaints on-line.^{27/} These changes are likely to influence the number of complaints by increasing consumer awareness of slamming and the availability of remedies, making any attempt to measure abuses in the near term premature.

The Commission's proposed reporting requirement would likely burden both the Commission and carriers, including those carriers who have not been found culpable in any slamming dispute. While the potential benefits of any reporting requirements are unknown, the Commission is certain to face an added strain on its limited resources if it attempts to review thousands of carrier reports for evidence of trends in slamming activity. A reporting requirement also would impose an operational and financial burden on carriers, a burden that is likely to be especially hard on competitive local exchange carriers struggling to break into the local telecommunications market.

Moreover, as the Commission is well aware, reporting requirements are meaningless unless the Commission develops reporting parameters, complete with detailed instructions, in a way that ensures that all carriers provide information in a consistent and usable manner. For example, unless the Commission defines the term "complaint" in a uniform fashion, any reporting requirement for slamming complaints will be susceptible to carrier manipulation, making comparisons among carriers invalid. At this point, the benefits of such reporting are not likely to be worth the administrative burdens necessary to develop meaningful reports.

If the Commission decides that a reporting requirement would be useful as a means of deterring misconduct, it should require submission of complaint reports only from carriers

^{27/} See Federal Communications Commission, "FCC Consumer Alert on Telephone Slamming," <http://www.fcc.gov/Bureaus/Common_Carrier/Factsheets/slamming.html> (site visited March 10, 1999) (describing Commission's plans for slamming web site).

who have violated the slamming rules in the past. For example, the Commission might impose a reporting requirement as one remedy in the complaint process, either on a case-by-case basis or in all instances where a certain number of slamming complaints have been upheld. Such an approach would be consistent with the goal of minimizing regulatory burdens while simultaneously protecting customers from unauthorized carrier changes.

CONCLUSION

For the reasons outlined above, MediaOne urges the Commission to modify its proposed slamming rules to balance the interests of consumer protection and competition.

Respectfully submitted,

MEDIAONE GROUP, INC.

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March 18, 1999

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I, JETTE WARD, hereby certify that on this 18th day of March, 1999, I caused copies of the foregoing "**COMMENTS OF MEDIAONE**" to be served by U.S. mail, first class, postage prepaid, or by hand delivery on the following:

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